

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: March 2, 2010 Name: John C. Freeman, Esq. Signature: 

PATENT  
CASE NO. 12212/39

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application: )  
Raymond I. Myers )  
U.S. Patent Application ) Group Art Unit: 3769  
Serial No.: 10/750,789 )  
Filed: January 2, 2004 )  
U.S. Patent No.: 7,655,002 ) Examiner: David M. Shay  
Granted: February 2, 2010 )  
For: LENTICULAR REFRACTIVE ) Confirmation No. 1486  
SURGERY OF PRESBYOPIA, )  
OTHER REFRACTIVE ERRORS, )  
AND CATARACT RETARDATION )

**REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT**

MAIL STOP PATENT EXT.  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It has come to our attention that there may be an error in the patent term adjustment calculated by the U.S. Patent and Trademark Office for the above-referenced patent application. Specifically, the patent term adjustment pursuant to 35 U.S.C. 154(b) of 679 days indicated on the ISSUE NOTIFICATION - Determination of Patent Term Adjustment under 35 U.S.C. 154(b)

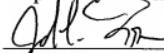
mailed on January 13, 2010 may extend the term of this patent by too few days. In particular, it is believed that the delay calculated by the Patent Office as being caused by the Patent Office is 226 days too small.

In particular, it is believed that the Patent Office has double counted a delay of 31 days regarding its delay in mailing a Notice of Allowance on May 4, 2009 in response to Applicant's Request for Continued Examination filed on December 3, 2008. This double counting is evidenced by the attached Patent Application Information Retrieval (PAIR) system's Patent Term Adjustment History that was publicly available as of March 2, 2010. It is believed that a Patent Office delay of 31 days, and not 62 days, is warranted for the late mailing of the Notice of Allowance.

The Patent Office has also failed to calculate 257 days of delay on its part due to the Patent Office's pre-Wyeth interpretation of 35 U.S.C. § 154(b)(2)(A). Applicant requests that the Patent Office recalculate the patent term adjustment in view of the Patent Office's interim procedure for patentees to request patent term adjustment recalculation that was announced on January 28, 2010. The undersigned notes that the interim procedure does not require the payment of a fee. Accordingly, no payment is being presented with this filing. If the undersigned is incorrect that no fee is required, then the undersigned requests that the appropriate fee be charged to Deposit Account No. 23-1925.

Based on the above comments, please review the calculation of the patent term adjustment and make corrections, if necessary.

Respectfully submitted,

  
John C. Freeman  
Registration No. 34,483  
Attorney for Applicant

BRINKS HOFER  
GILSON & LIONE  
P.O. Box 10395  
Chicago, Illinois 60610  
(312) 321-4200

Dated: March 2, 2010



<p><b>Patent eBusiness</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <a href="#">Electronic Filing</a></li> <li><input checked="" type="checkbox"/> <a href="#">Patent Application Information (PAIR)</a></li> <li><input checked="" type="checkbox"/> <a href="#">Patent Ownership</a></li> <li><input checked="" type="checkbox"/> <a href="#">Fees</a></li> <li><input checked="" type="checkbox"/> <a href="#">Supplemental Resources &amp; Support</a></li> </ul> <p><b>Patent Information</b></p> <ul style="list-style-type: none"> <li><a href="#">Patent Guidance and General Info</a></li> <li><input checked="" type="checkbox"/> <a href="#">Codes, Rules &amp; Manuals</a></li> <li><input checked="" type="checkbox"/> <a href="#">Employees &amp; Office Directories</a></li> <li><input checked="" type="checkbox"/> <a href="#">Resources &amp; Public Notices</a></li> </ul> <p><b>Patent Searches</b></p> <ul style="list-style-type: none"> <li><a href="#">Patent Official Gazette</a></li> <li><input checked="" type="checkbox"/> <a href="#">Search Patents &amp; Applications</a></li> <li><input checked="" type="checkbox"/> <a href="#">Search Biological Sequences</a></li> <li><input checked="" type="checkbox"/> <a href="#">Copies, Products &amp; Services</a></li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li><a href="#">Corporations</a></li> <li><a href="#">Trademark</a></li> <li><a href="#">Policy &amp; Law</a></li> <li><a href="#">Reports</a></li> </ul>	<p><input checked="" type="checkbox"/> <a href="#">Secured Patent Application Information Retrieval</a></p> <p><a href="#">XML Download</a>    <a href="#">Order Certified Application As Filed</a> <a href="#">Order Certified File Wrapper</a> <a href="#">View Order List</a></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">10/750,789</td><td colspan="6">LENTICULAR REFRACTIVE SURGERY OF PRESBYOPIA, OTHER REFRACTIVE ERRORS, AND CATARACT RETARDATION</td><td style="width: 10%; text-align: right;"><a href="#">PDF</a></td></tr> <tr> <td style="text-align: center;">Select New Case</td><td style="text-align: center;">Application Date</td><td style="text-align: center;">Transaction History</td><td style="text-align: center;">Image File Wrapper</td><td style="text-align: center;">Patent Term Adjustment</td><td style="text-align: center;">Continuity Data</td><td style="text-align: center;">Fees</td><td style="text-align: center;">Published Document</td><td style="text-align: center;">Address &amp; Document</td><td style="text-align: center;">Assignments</td><td style="text-align: center;">Attorney/Agent</td><td style="text-align: center;">Display Preferences</td></tr> </table> <p><b>Patent Term Adjustment</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Filing or 371(c) Date:</td><td>01-02-2004</td><td>USPTO Delay (PTO) Delay (days):</td><td>-</td></tr> <tr> <td>Issue Date of Patent:</td><td>02-02-2010</td><td>Three Years:</td><td>-</td></tr> <tr> <td>Pre-Issue Petitions (days):</td><td>-</td><td>Applicant Delay (APPL) Delay (days):</td><td>-</td></tr> <tr> <td>Post-Issue Petitions (days):</td><td>-</td><td>Total Patent Term Adjustment (days):</td><td>679</td></tr> <tr> <td>USPTO Adjustment (days):</td><td>-</td><td colspan="2"><a href="#">Explanation Of Calculations</a></td></tr> </table> <p><b>Patent Term Adjustment History</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Date</th><th>Contents Description</th><th>PTO(Days)</th><th>APPL(Days)</th></tr> </thead> <tbody> <tr><td>01-13-2010</td><td>PTA 36 Months</td><td></td><td></td></tr> <tr><td>02-02-2010</td><td>Patent Issue Date Used In PTA Calculation</td><td></td><td></td></tr> <tr><td>12-21-2009</td><td>Dispatch to FDC</td><td></td><td></td></tr> <tr><td>12-19-2009</td><td>Application Is Considered Ready for Issue</td><td></td><td></td></tr> <tr><td>12-15-2009</td><td>Issue Fee Payment Verified</td><td></td><td></td></tr> <tr><td>12-15-2009</td><td>Issue Fee Payment Received</td><td></td><td></td></tr> <tr><td>10-20-2009</td><td>Miscellaneous Incoming Letter</td><td></td><td>106</td></tr> <tr><td>10-13-2009</td><td>Mail Notice of Allowance</td><td></td><td>↑</td></tr> <tr><td>10-09-2009</td><td>Document Verification</td><td></td><td>↑</td></tr> <tr><td>10-09-2009</td><td>Notice of Allowance Data Verification Completed</td><td></td><td>↑</td></tr> <tr><td>08-30-2009</td><td>Date Forwarded to Examiner</td><td></td><td>↑</td></tr> <tr><td>08-04-2009</td><td>Request for Continued Examination (RCE)</td><td></td><td>↑</td></tr> <tr><td>08-30-2009</td><td>Disposal for RCE / CPA / R129</td><td></td><td>↑</td></tr> <tr><td>08-04-2009</td><td>Response to Reasons for Allowance</td><td></td><td>↑</td></tr> <tr><td>08-04-2009</td><td>Workflow - 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03-13-2008	Email Notification	
03-13-2008	Email Notification	
03-07-2008	Information Disclosure Statement (IDS) Filed	
03-07-2008	Information Disclosure Statement (IDS) Filed	
03-10-2008	Mail Examiner Interview Summary (PTOL - 413)	
03-10-2008	Mail Examiner Interview Summary (PTOL - 413)	
02-27-2008	Examiner Interview Summary Record (PTOL - 413)	
02-27-2008	Examiner Interview Summary Record (PTOL - 413)	
02-08-2008	Miscellaneous Incoming Letter	
02-08-2008	Miscellaneous Incoming Letter	
02-04-2008	Electronic Information Disclosure Statement	105
02-04-2008	Electronic Information Disclosure Statement	105
02-09-2008	Electronic Review	↳
02-09-2008	Electronic Review	↳
02-08-2008	Email Notification	↳
02-08-2008	Email Notification	↳
02-08-2008	Mail Final Rejection (PTOL - 326)	↳
02-08-2008	Mail Final Rejection (PTOL - 326)	↳
02-04-2008	Information Disclosure Statement (IDS) Filed	↳
02-04-2008	Information Disclosure Statement (IDS) Filed	↳
01-09-2008	Final Rejection	↳
01-09-2008	Final Rejection	↳
10-26-2007	Information Disclosure Statement considered	↳
10-26-2007	Information Disclosure Statement considered	↳
10-26-2007	Miscellaneous Incoming Letter	↳
10-26-2007	Miscellaneous Incoming Letter	↳
10-26-2007	Electronic Information Disclosure Statement	↳

10-26-2007	Information Disclosure Statement (IDS) Filed	⊕
10-26-2007	Date Forwarded to Examiner	⊕
10-22-2007	Response after Non-Final Action	⊕
09-22-2007	Electronic Review	
09-21-2007	Email Notification	
09-21-2007	Mail Non-Final Rejection	933
09-17-2007	Non-Final Rejection	⊕
06-21-2006	Information Disclosure Statement considered	⊕
06-21-2006	Information Disclosure Statement considered	⊕
06-21-2006	Information Disclosure Statement considered	⊕
06-21-2006	Information Disclosure Statement considered	⊕
06-20-2006	Information Disclosure Statement considered	⊕
06-21-2006	Information Disclosure Statement considered	⊕
04-26-2006	Information Disclosure Statement considered	⊕
06-26-2006	Information Disclosure Statement considered	⊕
06-29-2006	Information Disclosure Statement considered	⊕
09-16-2005	Information Disclosure Statement considered	⊕
02-11-2005	Information Disclosure Statement considered	⊕
06-15-2004	Information Disclosure Statement considered	⊕
02-20-2007	Information Disclosure Statement considered	⊕
06-01-2004	Information Disclosure Statement considered	⊕
02-20-2007	Electronic Information Disclosure Statement	⊕
02-20-2007	Information Disclosure Statement (IDS) Filed	⊕
01-29-2007	Correspondence Address Change	⊕
01-29-2007	Change in Power of Attorney (May Include Associate POA)	⊕
06-29-2006	Information Disclosure Statement (IDS) Filed	⊕
06-29-2006	Information Disclosure Statement (IDS) Filed	⊕
06-30-2006	Preliminary Amendment	⊕
06-26-2006	Electronic Information Disclosure Statement	⊕
06-26-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
06-21-2006	Electronic Information Disclosure Statement	⊕
06-21-2006	Information Disclosure Statement (IDS) Filed	⊕
05-18-2006	Examiner Interview Summary Record (PTOL - 413)	⊕
04-26-2006	Electronic Information Disclosure Statement	⊕
04-26-2006	Information Disclosure Statement (IDS) Filed	⊕
12-19-2005	Miscellaneous Incoming Letter	⊕
12-09-2005	Case Docketed to Examiner in GAU	⊕
09-16-2005	Information Disclosure Statement (IDS) Filed	⊕
09-16-2005	Information Disclosure Statement (IDS) Filed	⊕
07-01-2005	Rule 47 / 48 Correction of Inventorship Papers Filed	⊕
07-01-2005	Preliminary Amendment	⊕
02-11-2005	Reference capture on IDS	⊕
02-11-2005	Information Disclosure Statement (IDS) Filed	⊕
02-11-2005	Information Disclosure Statement (IDS) Filed	⊕
02-06-2005	IPW TSS Processing by Tech Center Complete	⊕
02-06-2005	Case Docketed to Examiner in GAU	⊕
06-15-2004	Information Disclosure Statement (IDS) Filed	⊕
06-15-2004	Information Disclosure Statement (IDS) Filed	⊕
06-01-2004	Information Disclosure Statement (IDS) Filed	⊕
06-01-2004	Information Disclosure Statement (IDS) Filed	⊕
06-01-2004	Reference capture on IDS	⊕
07-02-2004	Application Return from OIPE	⊕

07-02-2004	Application Is Now Complete	†
07-02-2004	Application Return TO OIPE	‡
07-01-2004	Application Return from OIPE	‡
07-02-2004	Application Is Now Complete	‡
07-01-2004	Application Return TO OIPE	‡
06-30-2004	Application Return from OIPE	‡
06-30-2004	Application Return TO OIPE	‡
06-30-2004	Application Dispatched from OIPE	‡
06-30-2004	Application Is Now Complete	‡
06-14-2004	Payment of additional filing fee/Prexexam	‡
06-14-2004	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	‡
02-27-2004	Cleared by OIPE CSR	†
01-24-2004	JFW Scan & PACK Auto Security Review	†
01-02-2004	Initial Exam Team nn	†

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